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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,337	01/22/2004	Jean-Louis Gueret	118323	2685
25944	7590	04/07/2006	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			WALCZAK, DAVID J	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/761,337

Applicant(s)

GUERET, JEAN-LOUIS

Examiner

David J. Walczak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-48 is/are pending in the application.
- 4a) Of the above claim(s) 7-11, 13-17, 19-22, 24, 26, 28-31, 33 and 40-42 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 43-47 is/are allowed.
- 6) ☒ Claim(s) 2-6, 12, 18, 23, 25, 27, 32, 34-39 and 48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendments to the specification have not been entered since the paragraph numbers in the amendment do not match the paragraph numbers in the original specification. These amendments should be remade using the correct paragraph numbers.

### ***Specification***

The disclosure is objected to because of the following informalities: Since the amendments to the specification have not been entered, the specification remains objected to since reference character 8 is used to denote two different elements (see paragraphs 0056, 0057, 0081, 0088, 0090 and 0098). Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claim 36, 2-6, 12, 18, 23, 25, 27, 32, 34-39 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "configured to be applied to a portion of a human body" (when referring to the substance) is indefinite in that it is unclear as to what materials are "configured" to be applied to a human body and what materials are not "configured" to be applied to a human body, i.e., a material harmful to the human body, i.e., gasoline, may still be "configured" to be applied in that it is able to be applied.

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Claims 36, 2-6, 12, 18, 23, 25, 27, 32, 34-39 and 48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The newly added limitation of the substance being "configured to be applied to the human body" is considered to be new matter in that this description of the substance is much broader than the description of the substance that was originally filed, i.e., the original specification defined specific cosmetics as the substance and this new limitation can encompass virtually any fluid or pasty material (virtually any fluid or pasty material, regardless of whether or not the material may have adverse affects on the body, can be considered "configured" to be applied to the human body in that it is capable of being applied to a human body).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-6, 12, 18, 23, 25, 27, 32, 34-39 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Mann. In regard to claim 36, Mann discloses a packaging and applicator device comprised of a receptacle 119 containing a substance

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“configured to be applied to a portion of a human body” and an applicator “configured to apply a substance on a portion of a human body” wherein the applicator comprises an applicator element having two walls 28 forming a cavity therebetween for retaining a substance, a slot 32 extending along a longitudinal axis through which the substance is dispensed and an opening (not numbered) whereby the cavity opens to the “outside” and wherein the opening has a width in the plane extending transversely to the slot that is greater than a width of the slot in the same plane. It is noted that statements of intended use, i.e., configured to apply a substance on a portion of the human body” do not lend any patentable structure to the claims. Further, the Mann device is capable of applying a substance to the human body should a user so choose to employ the device. In regard to claim 2, the slot is between the walls. In regard to claim 3, the walls are elongated with an axis that is parallel to the axis of the slot. In regard to claim 4, the slot is entirely separate from the opening. In regard to claim 5, the slot is situated opposite from the opening. In regard to claim 6, the applicator element has substantially V shape. In regard to claim 12, the slot extends in a rectilinear direction. In regard to claim 18, the edges of the slot are linear. In regard to claim 23, the slot 34 is uninterrupted along its entire length. In regard to claim 25, the opening is uninterrupted. In regard to claim 27, the device includes a stem 16 wherein the slot extends parallel to the longitudinal direction of the stem. In regard to claims 32 and 34, the walls are made from an elastically deformable elastomer (as evidenced by the shown cross-hatching and column 3, lines 2-8). In regard to claim 35, the applicator includes a “handle member” 16. In regard to claim 37, the wax dispensed by the Mann device is

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considered to be a "cosmetic" in that the wax is used to improve the appearance of the floor. In regard to claim 38, the applicator is considered to be releasably connected to the receptacle. In regard to claim 39, the applicator seals off the receptacle (via plate 25) in a leaktight manner (see column 2, lines 51-53). In regard to claim 48, the wax dispensed by the Mann device is considered to be a "care product" in the wax is used to treat, and thereby "care" for the floor.

### ***Allowable Subject Matter***

Claims 43-47 are allowed.

### ***Response to Arguments***

Applicant's arguments filed on 2/7/06 have been fully considered but they are not persuasive. The Applicant contends that the Mann reference is not applicable against the claims in that the substance dispensed by the Mann device is not configured to be applied to the human body and that the Mann device is not intended to be used to apply a substance to the human body.

The Applicant indicates that defining the substance as "configured to be applied to a portion of a human body" requires the composition to be "compatible" with the human body. This is not so. The claims merely call for a substance which is "configured" to be applied to the human body. In as much as the Applicant has defined "configured" to be applied to the human body in the specification, the composition in the Mann device is also so configured, i.e., should the substance in the Mann device be

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spilled onto a user's hand, the substance would then be "configured" to be applied to a human body, i.e., regardless of whether or not the substance is intended to be applied to a human body is immaterial. The fact that the substance could be applied to a human body (regardless of any possible adverse affect the substance may have on a human body) renders the substance "configured" to be applied to the human body.

In response to the Applicant's contention that the Mann device is not intended to be used to apply a substance to the human body, Again, the fact the this device is not intended to be used to apply a substance to the body is immaterial. The device is clearly capable of being so used, i.e., should a user place his hand under the dispensing member 23, the device would apply a substance to the human body. Accordingly, as the Mann device includes all of the claimed structure and is capable of being used as claimed (regardless of whether or not the device is intended to be so used or could potentially harm a human should the device be so used), the claims stand properly rejected as discussed supra.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
3/31/06